

### **REMARKS**

Claims 1 and 6-20 are pending in this application. By this Amendment, claims 1 and 6-18 are amended, claims 2-5 are cancelled, and claims 19 and 20 are added. Reconsideration and allowance in view of the following remarks are respectfully requested.

Applicant appreciates the courtesies extended to Applicant's representative during the September 26, 2007 telephone interview. The points discussed are incorporated into the above amendments and following remarks.

#### **Objection to Claims 2, 3, 8 and 15**

The Office Action objects to claims 2, 3, 8 and 15 as the term "injected." The rejection of canceled claims 2 and 3 is moot. Applicant amends claims 8 and 15 above in accordance with the Examiner's suggestions. Accordingly, Applicant requests the objections to claims 8 and 15 be withdrawn.

#### **Rejection of Claims 8-14 Under 35 U.S.C. §101**

The Office Action rejects claims 8-14 under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Applicant amends claims 8-14 above in accordance with the Examiner's suggestions. Accordingly, Applicant requests the rejection claims 8-14 under 35 U.S.C. §101 be withdrawn.

#### **Rejection of Claims 1-18 Under 35 U.S.C. §112, Second Paragraph**

The Office Action rejects claims 1-18 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Office Action rejects claims 1-18 for containing terms that are inherent to the art of genetic programming.

During the September 26, 2007 telephone interview, Applicant's representative directed the Examiner to a number of websites that explain the art of genetic programming and the terms rejected in the Applicant's claims. These websites are listed in an Information Disclosure Statement (IDS) filed in conjunction with the filing of this Amendment at the Examiner's request. Please note that these websites are provided merely as a sample of websites and other materials available on the subject of genetic programming for the Examiner's convenience. The Examiner is invited to explore other materials available concerning genetic programming as a background for understanding Applicant's invention.

The discussion during the interview and a review of the genetic programming websites should provide the basis for overcoming the rejections. Accordingly, Applicant requests the rejection of claims 1-18 under 35 U.S.C. §112, second paragraph be withdrawn.

**Rejection of Claims 1-18 Under 35 U.S.C. §102(e)**

The Office Action rejects claims 1-18 as being anticipated by Cain (USP 7,068,600). As discussed in the September 26, 2007 telephone interview, Applicant asserts that Cain does not concern genetic programming, and in particular, does not disclose or suggest at least "an active packet that implements a genetically programmed adaptation of one of the plurality of nodes in response to a change of condition of the one node of the plurality of nodes, a functional unit that is added into the active packet, a fitness function that allows functional evolution of the plurality of nodes, the functional unit remaining inactive until the fitness function is added into the one node of the plurality of nodes and evolves to maximize the fitness function, wherein the system genetically modifies itself to meet a specific fitness criteria based on the fitness function," as recited in independent system claim 1, and similarly recited in independent computer readable medium claim 8, and independent method claim 15.

Therefore, Applicant asserts that independent claims 1, 8 and 15 contain patentable subject matter. Claims 6, 7, 9-14 and 16-20 depend from independent claims 1, 8, and 15 and therefore also contain allowable subject matter. Accordingly, Applicant requests the rejection claims 1-18 under 35 U.S.C. §102(e) be withdrawn.

### **CONCLUSION**

Having addressed all rejections and objections, Applicant respectfully submits that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited. If necessary, the Commissioner for Patents is authorized to charge or credit the **Prass & Irving, LLP, Account No. 50-4082** for any deficiency or overpayment.

Respectfully submitted,

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